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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 27th November 1952

No. 19/47/52-Elec.III.—WHEREAS the election of Shri Sujaniram of Kawadi Kasar, Tahsil Sanjari-Balod, District Durg, as a member of the Legislative Assembly of Madhya Pradesh from the Chouki constituency has been called in question by an Election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ramlal of Mohala, P.C. No. 112, Tahsil Sanjari-Balod, District Durg;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNALS, RAJNANDGAON

Election petition No. 47 of 1952 from Chouki constituency of Durg District.

Election case No. 1 *of* 1952 *of Rajnandgaon*

QUORUM

Shri S. A. Pande, M.A., LL.B., *Chairman.*

Shri G. W. Chiplonkar, M.A., LL.B., ... } *Members of the Tribunal.*
Shri B. R. Mandlekar, B.A., LL.B., ... }

Ramlal son of Sadashiv, resident of Mohala, Chouki constituency, tahsil Sajnari-Balod, District Durg ... ... *Petitioner.*

Versus

1. Sujaniram son of Daryaosingh of Kawadi Kasar, Tahsil Sanjari-Bolod, District Durg.
2. Lal Shyamshah son of Lal Bhagwanshah, of Mohala, tahsil Sanjari-Balod, District Durg. } *Respondents.*
3. Prayagsingh son of Ujiyarsingh of Mohala, Tahsil Sanjari-Balod, District Durg

ORDER

(Passed this 15th day of November 1952).

The petitioner Ramlal son of Sadashiv of Mohala, tahsil Sanjari-Balod, District Durg, Madhya Pradesh, who is a voter in the Chouki constituency for the Reserved Seat, has filed this election petition against respondent No. 1 Sujaniram son of

Daryaosingh of Kawadi Kasar, District Durg, who has been declared elected to the Madhya Pradesh Legislative Assembly from that (Chouki) constituency (in Durg District). Respondent No. 2 Lal Shyamshah was another candidate, who has lost the election against the respondent No. 1, Sujaniram. Respondent No. 3 Prayagsingh son of Ujiyarsingh had also filed his nomination paper for a seat in this constituency. The Returning Officer rejected the nomination paper of respondent No. 3 Prayagsingh on the ground that the declaration made by the respondent No. 3 which was required to be attested by a magistrate, was not so attested by a magistrate as contemplated by rule 6 of the Representation of People (Conduct of Election and Election Petitions) Rules, 1951. The declaration has been verified in the nomination paper before Shri Kashiram, who was at the time an Additional District and Sessions Judge at Durg. The petitioner contended that the rejection of nomination paper of respondent No. 3 Prayagsingh was illegal and improper, and that it has materially affected the result of the election. He, therefore, prayed that the election be declared to be wholly void and consequently set aside.

2. The respondent No. 1 affirmed that the nomination form of respondent No. 3 Prayagsingh was rightly rejected. He also urged that the nomination paper was defective in other particulars, *e.g.*, the nomination paper did not give the full description of the area where the petitioner's name was entered in the list of voters; that he did not belong to a Scheduled Tribe mentioned in the Scheduled Tribes Order 1950. He also disputed the fact that the petitioner was a voter and was entitled to file this petition. Lastly he urged that the respondent No. 3 was in fact an alternative candidate for respondent No. 2 and would in any case have withdrawn from the election in his favour and in fact did ultimately work for the respondent No. 2. He, therefore, submitted that the result of the election was not materially affected by the rejection of nomination of respondent No. 3.

3. The respondent No. 3 admitted the contentions of the petitioner. He, however, added that he had no mind to oppose or contest the election against respondent No. 1 or the respondent No. 2, and that he would have withdrawn his candidature even if it had been accepted as valid by the Returning Officer.

4. The points which arise for determination in this case are as below:—

(1) Is the petitioner an elector in the Chouki constituency and as such entitled to present this election petition?

(2) Has the nomination paper of respondent No. 3 been validly verified as required by rule 6 of the Representation of People Rules, 1951?

(a) Was Shri Kashiram a magistrate, who could attest the verification made by the respondent No. 3 in regard to his belonging to the Scheduled Tribe?

(b) Whether the respondent No. 3 Prayagsingh was a member of the Scheduled Tribe entitled to file his nomination paper for the reserved seat in this constituency?

(c) Did the Returning Officer illegally reject the nomination paper of respondent No. 3 Prayagsingh?

(3) Has the result of the election been materially affected by the illegal rejection of the nomination paper of respondent No. 3 Prayagsingh?

(4) Whether the election is void and liable to be set aside wholly?

FINDINGS

5. *Point No.* 1.—The name of the petitioner has been entered in the voters' list in Chouki constituency of the Durg District to which we referred. The entry appears at serial No. 187. The petitioner examined himself and showed that he was the same person, who was entered against that serial number in the Voters' list of that constituency. A certified extract of the voters' list has been filed by him (Ex.R-2). The fact that the petitioner is an elector has not been rebutted, and indeed, is not seriously disputed. We, therefore, hold that the petitioner is an elector in the constituency in question and is entitled to file this election petition.

6. *Point No.* 2(b).—In the Electoral Roll of this constituency the names of respondents 1, 2 and 3, are respectively entered against serial numbers 120, 305 and 352. They have been described in this electoral roll as Adiwasis, *i.e.*, Scheduled Tribe. Respondent No. 3 Prayagsingh stated in the witness box that he was a Gond and that respondent No. 2 and respondent No. 1 were also Gonds like him. He also added that there was no difference between Rajgonds and Gonds. There is

also no room in the rules framed for making this distinction. At the time of the arguments, the counsel for the respondent No. 1 did not even refer to this objection. We have no hesitation in holding that the respondent No. 3 did belong to the Scheduled Tribe and that he was therefore, entitled to file his nomination paper for the seat in the Chouki constituency which was reserved for the Scheduled Tribes.

7. *Point No.* 2 (*a and c*).—Under rule 6 of the Representation of the People Rules, 1951, in case of a nomination paper for a reserved seat, the candidate has to make a declaration that he belongs to a Scheduled Tribe and further he has also to declare the particular Scheduled Tribe to which he belongs. This declaration is required to be verified by a magistrate. The nomination paper of the respondent No. 3 contains the necessary declaration and the declaration has been verified by him before Shri Kashiram, who has described himself as an Additional District and Sessions Judge, Durg. The verification bears the seal of the court of the Additional Sessions Judge, Durg. The contention of the respondent No. 1 is that Shri Kashiram being an Additional District and Sessions Judge was not a Magistrate and the verification made before him is no valid verification at all. The expression "magistrate" has not been defined either in the Representation of the People Act or in the rules framed for the conduct of Elections and the election petitions. The 'magistrate' under Dictionary meaning in Chamber's Twentieth Century is said to be 'a person entrusted with the power of putting the laws into force ; a Justice of the Peace.' In the Concise Oxford Dictionary the term is defined as 'a Civil Officer administering law; a Justice of the Peace.' By Representation of the People (Conduct of Election and Election Petitions) Rules, 1951 [Rule 2(6) the General Clauses Act 1897 (X of 1897)] has been made applicable. For the purpose of interpretation of the Representation of the People Act and the Rules Section 3(32) General Clauses Act defines the term as 'a magistrate shall include every person exercising all or any of the powers of the magistrate under the Code of Criminal Procedure for the time being in force.' So far as the dictionary meaning goes, it cannot be disputed that Shri Kashiram was a Civil Officer administering law and would, therefore, be a magistrate.

8. The definition in the General Clauses Act is an inclusive definition and clearly shows that magistrates under the Criminal Procedure Code are not the only magistrates. The learned counsel for the respondent No. 1 drew our attention to the Criminal Procedure Code and urged that the Criminal Procedure Code has mentioned particular categories of magistrates and courts. Having regard to the definition in the General Clauses Act we do not feel that his argument is correct. A Sessions Judge is a court of appeal against the decisions of magistrates of the first class exercising the same powers in dealing with the appeal as those of the magistrates from whom the appeal is heard. It seems to us that exercise of this power though entrusted to a specific court is still the exercise of the powers of magistrate from whom the appeal is heard. We do not agree with Shri Hazarnavis when he urged that the exercise of the appellate power is altogether different. We would add that the powers of the appellate court, as it is well known, are limited to the powers of a magistrate trying the case against whose decision the appeal or revision is heard.

9. Shri Hazarnavis wanted to make a distinction between an Additional Sessions Judge and a Sessions Judge. He contended that since the Additional Sessions Judge could not take cognizance of any appeal or case unless it was made over him by the Sessions Judge, he could not be said to be exercising the powers ependently. It seems to us that this is a distinction which is unsubstantial. ...henever the case is made over to him he does exercise the powers and it is not necessary for the distinction that he should be in a position to take the matter without reference to anybody else. We may also add that except for the powers given to the Sessions Judge to select particular cases or appeals for trial by him there is no difference between the powers of an Additional Sessions Judge and the Sessions Judge in the matter of actually exercising the powers and dealing with the cases before him. When a particular person is appointed an Additional Sessions Judge under Article 233 of the Constitution read with section 9(3) of the Criminal Procedure Code, it is always stated that he is appointed an Additional Judge to the Court of Sessions in a particular Sessions Division. The Additional Sessions Judge and the Sessions Judge, therefore, are Judges of the same court and naturally therefore, exercise the same powers.

10. Under section 25 Criminal Procedure Code, a Sessions Judge in virtue of his office is a Justice of the Peace within and for the whole of the territories administered by the State Government under which he is serving. Since an additional Sessions Judge is a Judge of the Court of Sessions. In our opinion he is also a Justice of the Peace. Shri Kashiram when he was posted as an Additional Judge of the Court of Sessions in the Durg Sessions Division, by virtue of his office became a Justice of the Peace.

11. A Justice of the Peace is a kind of magistrate. It was argued that the State Government have not assigned any particular functions to the Justices of the Peace in Madhya Pradesh. But in our opinion it is not necessary that any particular function should be assigned to Justices of the Peace in order that they could be deemed to be Magistrates. It can well be imagined that when a magistrate is posted to a district, the District Magistrate may not assign to him any magisterial *i.e.* criminal work. It may be that he may assign to him any other work apart from magisterial work, such as Food, Elections, Census, Nazul etc, etc. The fact that he is not doing at that particular time any magisterial case work does not mean that he has ceased to be a magistrate for the time being. A Justice of the Peace, therefore, remains a magistrate, although no particular work has been assigned to him by the State Government. In his commentary on the Criminal Procedure Code, Mitra has stated that Justice of the Peace exercises the powers of the first class Magistrate under section 36 (page 65, Vol. I, 11th edition 1949). Shri Kashiram must then be deemed to be a magistrate within the meaning assigned to the term in the dictionaries and in the General Clauses Act. Verification of the declaration before him cannot, therefore, be regarded as invalid. Shri Hazarnavis drew our attention to the Privy Council case of Nazir Ahmand (A.I.R. 1936 P.C. 253), and urged that when the Act prescribes a particular mode of doing a thing, no other substitute is permissible. In the view we have taken about Shri Kashiram being a Magistrate, the argument of Shri Hazarnavis that there is no strict compliance with the Rule 6 is not correct. It does not, therefore, fall to be considered whether an attestation before some body else would be enough. We do not endorse the argument of the petitioner's counsel that attestation is intended to show the identity of the person, who is offering himself as a candidate. We do not also accept the argument of the learned counsel for respondent No. 1 that it is not clear Shri Kashiram verified and attested the declaration as Additional District Judge or Additional Sessions Judge. In our view, therefore, the ground for rejection by the Returning Officer that the verification was not by a magistrate was not good and the rejection was illegal.

12. It was urged that the nomination paper of respondent No. 3 did not correctly give the full description of the area where the name of Prayagsingh appeared. We do not feel pressed by this objection. The Returning Officer himself did not feel that the deficiency was such as to deserve rejection of the nomination paper on that ground. There is nothing to show to us that the insufficiency of those details prevented the proper identification of the person filing the nomination paper. The defect in any case is a technical defect not of a substantial character within the meaning of section 36(4) of the Representation of the People Act, 1951.

13. An attempt was made to show that the Returning Officer Shri Limaye knew that the respondent No. 3 belonged to the Scheduled Tribe and that this was enough compliance with the verification necessary under the rules. The evidence of Shri Limaye does not conclusively show that he had this knowledge at the time the nomination paper was filed and scrutinized. In any case we do not think that knowledge of Shri Limaye could dispense with the verification required for the declaration according to the rules. We also record our opinion that we do not agree with the argument of the learned counsel for the petitioner that the defect in the verification under Rule 6 is a technical defect not of a substantial nature within the meaning of section 36(4) of the Representation of the People Act, 1951.

14. The next question is whether the result of the election of this constituency has been materially affected by the rejection of the nomination paper of respondent No. 3, Prayagsingh. There were three candidates for the seat from this constituency. Only two were held to have been validly nominated and the electors exercised their votes in favour of either of them. It is not disputed that the elected candidate Sujaniram, respondent No. 1, secured only 125 votes more than the votes polled by the defeated candidate Lal Shyamshah, respondent No. 2 Respondent Sujaniram polled 10717 and defeated candidate respondent No. 2 polled 10592. It has been urged by Shri Hazarnavis tha tif the nomination paper of respondent No. 3 Prayagsingh had been accepted, the result of the election would not have been materially affected, since the votes obtained by respondent No. 2 would have been divided between respondent No. 2 and respondent No 3 Prayagsingh. The argument ignores the fact that the respondent No. 3 was a candidate for a party, while the respondent No. 2 was an independent candidate. It is suggested that some of the votes polled by the independent candidate must necessarily have been the votes which would have been cast for the party to which the respondent No. 3 belonged. It seems to us that this argument is not well founded.

15. It was also urged that the result of the election has not been affected materially, since respondent No. 3 was an alternate candidate for respondent No. 2 and had indeed worked for respondent No. 2 after his nomination paper was rejected. In the witness-box the respondent No. 3 has admitted that he did work for respondent No. 2. We, however, feel that this consideration does not necessarily show that the result of the election would not have been materially different. Some voters, who would have been willing to vote for Prayagsingh, who represented a party may not like to vote for an independent candidate whom Prayagsingh desired to support. His helping the independent candidate, therefore, does not, in our opinion, show that the result of the election would have been the same as it has in fact been. There is also nothing to show that he was an alternate candidate for respondent No. 2.

16. Shri M. N. Phadke for the petitioner has very vehemently urged that the mere fact that the nomination paper has been rejected wrongly and the electors have been deprived of their right to vote for the candidate of their choice does vitiate the election and materially affect the result. He has referred to us a number of decisions in which the Election Tribunals have consistently held that a rejection of the nomination paper wrongly, affects the result of the election materially. *In Batala Sikh Rural Constituency (case No. 2) Wasawa Singh Vs. Waryam Singh and others*, the Election Tribunal observed as below:—"There is, however, a vital difference between the improper rejection and the improper acceptance of a nomination. In the former case the entire electorate is deprived of its right to vote for a candidate who was qualified to stand. In the latter case all the candidates including the unqualified one compete at the polls and the electorate gets an opportunity of voting for a candidate of its choice. Therefore, while in case of an improper rejection of a nomination there is an initial presumption that the result of the election has been materially affected, in case of improper acceptance of the petitioner must prove by actual evidence that the result has been materially affected. (Indian Election Cases; 1935-50: Doabia Vol. II page 263)." We endorse fully these observations.

17. It was urged by the learned counsel for the respondent 1, that under section 100(1)(c) of the Representation of the People Act, 1951, there is no room for agreeing with the argument that in case of rejection of a nomination paper there is a presumption that the result of the election has been materially affected. It is quite true that the wording in that sub-section does appear to make no distinction between improper rejection of a nomination paper and improper acceptance of a nomination paper. Shri Phadke for the petitioner urged that when this section was framed the Legislature had before it the decisions of the various Election Tribunals, who held that there was a presumption that the result of the election was materially affected in case of improper rejection of a nomination paper and yet it did not think of changing the words which are exactly the same as in the previous enactment on this point shows that the Legislature approved the interpretation put by the Election Tribunals on that provision. We feel there is an amount of force in this argument. Indeed, the Election Tribunals which have been set up under the present enactment have also taken the same view. In Election Petition No. 27 of 1952, decided by the Election Tribunal, West Bengal (Tikaram *Vs.* Lalit Bahadur Kharga) the Tribunal observes "It has been uniformly held in numerous cases that when the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected." (Gazette of India Extraordinary, dated 15th October 1952, Part I Section 1, Page 2285). It went on to observe after referring to the Agra District case that the irregularity occasioned by the improper rejection is so grave that the presumption would require the strongest and most conclusive proof for its rebuttal and the burden would lie upon the respondent to rebut it. In this case the respondent led no evidence to rebut it, nor has any material been placed before us to hold that the result has not been materially affected. He, however, referred us to the statement of respondent 3 in his written statement before us that in any case the respondent 3 would have withdrawn in favour of either the respondent 1 or the respondent No. 2. It is urged that this admission was enough to show that the result of the election has not been materially affected. Respondent 3 has been examined by us as a witness for the Tribunal. He has explained his admission in the written statement by telling us that he at that time thought that it would have been futile for him to contest the election against a Congress nominee and against a rich Zamindar like respondent 2. We do no think that we need attach much weight to what he felt then and feels now. Opinions of man are liable to change in the particular circumstances in which they find themselves at particular moments. Apparently after his nomination paper was rejected and after his mandamus petition to the High Court was also rejected, the respondent 3 may have been led to believe that

it would have been futile for him to contest. When a man is in the fight, he never thinks that he is likely to lose. Such afterthoughts, therefore, as occurred to respondent 3 later on, are no guide to judge whether his not being there as a candidate would have materially affected the result of the election. Immediately after the rejection of his nomination paper the respondent 3 approached the High Court for invalidating the order of the Returning Officer under Article 226 of the Constitution. That conduct on his part gives us an idea that he was quite keen on entering the contest and would surely not have withdrawn his candidature. Further the respondent No. 3 Prayagsingh gives us the impression that after this election petition was filed, he has been swayed by influences brought to bear on him. His statement that he would have withdrawn cannot be held to show that the result of the election has not been materially affected.

18. The election Tribunal also observed, "The question of success or failure of the petitioner cannot be the criterion to determine whether the result of the election has been materially affected by the improper rejection of his nomination. None can possibly foresee the result of an election and speculative evidence on that question cannot have any value. The fact remains that the electors have been improperly deprived of the freedom of exercising their right of franchise by selecting the candidate of their choice from among those who are eligible to remain in the field." (Gazette of India dated 15th October 1952, Part I, at page 2293). We concur with these observations. We, therefore, hold that the result of the election in this case has been materially affected by the illegal rejection of the nomination paper of respondent No. 3 Prayagsingh. We are, therefore, of the opinion that the election of the Chouki constituency to the Madhya Pradesh Legislative Assembly is wholly void and should be set aside.

Sd/- B. R. Mandlekar,
Member.

Sd/- G. W. Chiplonker,
Member. 15-11-52.

19. I had the advantage of studying the views of my learned brothers. I associate myself with their findings that the petitioner Ramlal is an elector in the Chouki constituency, and as such entitled to present this election petition, and that respondent 3 Prayagsingh is a member of the Scheduled Tribes. I further agree that the verification of his nomination paper by respondent 3 Prayagsingh on solemn affirmation before Shri Kashiram, Additional District and Sessions Judge, was sufficient compliance of rule 6 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. This rule prescribes its verification by the candidate before a "magistrate." Rule 2(6) *ibid* provides that the General Clauses Act, 1897, shall apply for the interpretation of these rules. Section 3(32) provides that a "magistrate" shall include every person exercising all or any of the powers of a magistrate under the Code of Criminal Procedure for the time being in force." This definition is thus inclusive definition. In the Chamber's Twentieth Century Dictionary a magistrate is defined as a person entrusted with the power of putting the laws in force; a justice of the peace. In the Concise Oxford Dictionary the definition given is "Civil Officer administering law; JUSTICE of the peace" In the Webster's International Dictionary the definition given is "a person clothed with power as a public civil officer; a public civil officer invested with the executive government, or some branch of it."

20. An Additional District and Sessions Judge is, therefore, a "magistrate" within the dictionary meaning of that term. There is nothing in the General Clauses Act or the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, to indicate that the term "magistrate" was used in rule 6 in any less restricted connotation or denotation than what it acquires by its dictionary meaning.

21. On this view it appears unnecessary to consider whether Shri Kashiram is a Justice of the Peace under section 25 of the Criminal Procedure Code, or whether by exercising the powers of the Additional Sessions Judge under the Criminal Procedure Code he becomes any of the specified classes of magistrates mentioned in that Code.

22. Accordingly, I agree with the finding of my learned brothers that Shri Limaye, the Returning Officer, had illegally rejected respondent 3 Prayagsingh's nomination paper. Shri Limaye appears evidently to have founded his order on the fact that Shri Kashiram was not designated a magistrate of any of the categories mentioned in the Criminal Procedure Code. As indicated, the term "magistrate" has a wider connotation under its true meaning.

23. My learned brothers have arrived at the finding that the rejection of respondent 3 Prayagsingh's nomination paper has materially affected the result of the election. I like to make the following observations on this issue. In paragraph 3 of respondent 3 Prayagsingh's written statement he has stated that "he had no mind to oppose or contest election against, either or both of the respondents, respondent 1 Sujaniram or respondent No. 2 Lal Shyamshah, and the respondent No. 3 Prayagsingh would have withdrawn his nomination even if held valid by the Returning Officer, as he did not want to be a rival to any of these two respondents." This statement of respondent 3 indicates that he was not going to contest the election in any event, whether his nomination paper had been accepted or rejected by the Returning Officer. It is then legitimate to enquire why he had filed his nomination paper at all. Petitioner Ramlal has admitted in his evidence that respondent 3 Prayagsingh had been in the service of respondent 2 Lal Shyamshah from 1936 to 1950 as an accountant and later as the Diwan or—Manager. The petitioner Ramlal has further admitted that Ramlal himself had been in the service of respondent 2 Lal Shyamshah for about 41 years in different capacities till 1950. It appears not improbable that respondent 3 Prayagsingh had filed his nomination paper and that the present petitioner Ramlal filed this election petition at the instance of Lal Shyamshah, the defeated candidate. This view is further supported by the admission of respondent Prayagsingh himself that he had actually worked for Lal Shyamshah in that election. In these circumstances, I am inclined to the view that Prayagsingh's statement that he would have withdrawn his nomination and would not have contested the election ought be accepted. By adding in his statement, that he might have withdrawn alternatively in favour of the Congress candidate, respondent 1 Sujaniram, he indicates that he was amenable to any kind of pressure from either of the two candidates, respondents 1 and 2.

24. Respondent 3 Prayagsingh has further stated in his evidence that from the result of the election he had come to the conclusion that it would have been futile for him to contest the election as against the Congress candidate like respondent 1 or a rich Zamidar like respondent 2. Even this statement of his shows that he may not enter into the contest, if a fresh election were to take place. It is not improbable that he was alive to these considerations even when he had originally filed his nomination paper, and that he had filed it for considerations other than of contesting the last election.

25. Under Section 100(1) (c) of the Representation of the People Act, 1951, the Tribunal can declare the election to be wholly void only when the result of the election has been materially affected by the rejection of any nomination paper. On a plain and proper interpretation of this provision, I imagine that even the petitioner has to satisfy the Tribunal that the result of the election has been materially affected by the rejection of respondent 3 Prayagsingh's nomination paper. He has not led any evidence on this point beyond the bare fact that respondent 1 had secured 125 votes more than respondent 2. Respondent 1 was a Congress candidate. Respondent 2 was an independent candidate. Respondent 3 Prayagsingh was a candidate for the *Ram Rajja Parishad* party. It is conceivable that when respondent 3 Prayagsingh admittedly canvassed for respondent 2 Lal Shyamshah in the election, he might have advocated to his own followers to vote for respondent 2 Lal Shyamshah. It is, therefore, not improbable that if respondent 3 Prayagsingh had also been a candidate, respondent 2 Lal Shyamshah ht have lost some of the votes secured by him.

26. For these reasons, I do not feel satisfied that the result of the election has been materially affected by the rejection of respondent 3 Prayagsingh's nomination paper. I, however, find myself against the decisions of the Election Tribunals reported in Hammond's Election Cases and Doabia's Indian Election Cases, and against the view of my learned brothers.

The 15th November 1952.

(Sd.) S. A. PANDE,
Chairman, Election Tribunals,
Rajnandgaon.

ORDER OF THE TRIBUNAL

27. The Tribunal declares that the election of Chouki constituency of the Madhya Pradesh Legislative Assembly is wholly void. We are unable to find that respondent 1 Sujaniram is responsible for the order of the Returning Officer in rejecting the nomination paper of respondent 3 Prayagsingh. For this reasons

we direct that each party shall bear his respective costs. The petitioner shall be liable to pay the printing charges for the publication of his election petition in the Madhya Pradesh Gazette.

(Sd.) S. A. PANDE,
Chairman, Election Tribunals, Rajnandgaon.
(Sd.) G. W. CHIPLONKER,
Member, Election Tribunals, Rajnandgaon.

CAMP-DURG;
The 15th November 1952.

(Sd.) B. R. MANDLEKAR,
Member, Election Tribunals, Rajnandgaon.

P. S. SUBRAMANIAN,
Officer on Special Duty.

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